

§ 2.788

practical matter, could not be alleviated through a petition for review of the presiding officer's final decision; or

(2) Affects the basic structure of the proceeding in a pervasive or unusual manner.

[56 FR 29409, June 27, 1991]

§ 2.788 Stays of decisions of presiding officers pending review.

(a) Within ten (10) days after service of a decision or action of a presiding officer any party to the proceeding may file an application for a stay of the effectiveness of the decision or action pending filing of and a decision on a petition for review. This application may be filed with the Commission or the presiding officer, but not both at the same time.

(b) An application for a stay must be no longer than ten (10) pages, exclusive of affidavits, and must contain the following:

(1) A concise summary of the decision or action which is requested to be stayed;

(2) A concise statement of the grounds for stay, with reference to the factors specified in paragraph (e) of this section; and

(3) To the extent that an application for a stay relies on facts subject to dispute, appropriate references to the record or affidavits by knowledgeable persons.

(c) Service of an application for a stay on the other parties shall be by the same method, e.g., telecopier message, mail, as the method for filing the application with the Commission or the presiding officer.

(d) Within ten (10) days after service of an application for a stay under this section, any party may file an answer supporting or opposing the granting of a stay. This answer must be no longer than ten (10) pages, exclusive of affidavits, and should concisely address the matters in paragraph (b) of this section to the extent appropriate. No further replies to answers will be entertained. Filing of and service of an answer on the other parties must be by the same method, e.g., telecopier message, mail, as the method for filing the application for the stay.

(e) In determining whether to grant or deny an application for a stay, the

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Commission or presiding officer will consider:

(1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;

(2) Whether the party will be irreparably injured unless a stay is granted;

(3) Whether the granting of a stay would harm other parties; and

(4) Where the public interest lies.

(f) In extraordinary cases, where prompt application is made under this section, the Commission or presiding officer may grant a temporary stay to preserve the status quo without waiting for filing of any answer. The application may be made orally provided the application is promptly confirmed by telecopier message. Any party applying under this paragraph shall make all reasonable efforts to inform the other parties of the application, orally if made orally.

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AVAILABILITY OF OFFICIAL RECORDS

§ 2.790 Public inspections, exemptions, requests for withholding.

(a) Subject to the provisions of paragraphs (b), (d), and (e) of this section, final NRC records and documents, including but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, or order, or regarding a rulemaking proceeding subject to this part shall not, in the absence of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room, except for matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;